J. J. Foam Pvt. Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-09-2003

Reported in : (2004)(165)ELT309TriDel

Judge : A T V.K., P Bajaj

Appellant : J. J. Foam Pvt. Ltd.

Respondent : C.C.E.

Judgement :

1. In these two appeals, filed by M/s J. J. Foam P. Ltd., the issue involved is whether the goods manufactured by them, are classifiable under sub-heading No.3921.10 of the Schedule to the Central Excise Tariff Act as claimed by them or under heading No.94.04 of the Tariff as confirmed by the Commissioner (Appeals), under the impugned order.

2. Sh. V. Valte, learned S.D.R., submitted that the process of manufacture, as given by the appellants, mentions that the sides of PU Foam sheets for mattresses are taped with cotton tape as packing to protect the edges from damaging; that this issue has been settled by the appellate Tribunal in the case of C.C.E, Meerut Vs Sheela Foams (P) Ltd., 2001 (138) ELT 1387 (Tri.-Del.) and Sheela Foams Pvt. Ltd. Vs C.C.E., Ghaziabad, 2003-TAXINDIAONLINE-78-CESTAT-DEL. He, therefore, requested that in view of these two decisions of the Tribunal, the appeals, filed by the appellants, deserve to be rejected. The appellants, on the other hand, have relied upon the Trade Notice No.4/1993 dated 18.1.93 of Meerut

Commissionerate, which has clarified that PU Foam sheets obtained by cutting of PU foam block for use as mattresses will merit classification under Heading No.39.21 of the Tariff; that the same position was reiterated in Board's circular dated 17.12.91 which conveyed to the field formations the view point of the Nomenclature Committee, which has unanimously agreed to classify the expanded Polyurethane Foam sheets merely cut into rectangle in CCCN heeding 39.01 despite the fact that they were intended for use as mattresses. It has also been contended by the appellants that no penalty is imposable as there was never any mistatement or evasion of duty by them because they were filing classification declaration regularly; that they had changed the classification of the impugned product from 94.04 to Chapter 39 as they had classified the goods under heading 94.04 under ignorance.

3. After considering the submissions of both the sides, we observe that the appellants have themselves mentioned in their appeal memo that the sheets for matresses are taped for protecting sides being consumer goods. The issue regarding classification of the impugned goods has been considered by the Tribunal in Sheela Foams (P) Ltd. case, 2003-TAXINDIAONLINE-78-CESTAT-DEL. wherein the Tribunal has held as under: "We have considered the submissions of both the sides. We observe that the Tribunal has considered the question of classification of PU Foam sheets cut to size of mattresses with industrial tape affixed on the edges in the appellants own case as reported in 2001 (138) ELT 1387 (Tribunal). The Tribunal after considering the submissions of both the sides and Note 10 to Chapter 39 of the Central Excise Tariff observed that "sheets as such were not usable as mattresses as they were liable to be dispersed., disheveled or bulged out of wither out. Sheets were not usable as mattresses unless they were further worked, reinforced or supported on the edges. The goods were admittedly mattresses. By the process of reinforcing and support of the edges the sheets had assumed the shape of mattresses." The Tribunal, further, observed that "when the sheets and mattresses are separately described in the tariff, it is the foam in which the goods are cleared which is relevant for classification" The Tribunal had also considered the Trade Notice 4/1993 dated 18.1.93 and observed "that according to the Trade Notice PU foam sheets obtained by cutting of PU Foam block for use as mattresses will merit classification

under heading No.39.21. The goods presented for assessment should be sheets and not mattresses even when the sheets have been obtained by cutting of the PU Foam for use in mattresses. The Trade Notice does not provide that Mattress as such will be classifiable differently when they are specifically covered by Heading No. 94.04." Regarding clarification received from the Customs Cooperative Council the Tribunal had mentioned "that the issue was of flexible PU Foam slabs or sheets for use as mattresses but not of mattresses as such.

the committee had opined that the expanded PU foam sheets merely cut into rectangle even if intended for use as mattresses were classifiable under Heading No. 39.01". Thus following the ratio of the Tribunal's decision in the Appellants' own case, we hold that where PU foam sheets cut to size of mattresses have been affixed with industrial tape on the edges, the products have become mattresses classifiable under heading 94.04." Following the ratio of these decisions, we hold that the impugned product is classifiable under heading 94.04. We, therefore, uphold the demand of duty. We, however, agree with the appellants that the penalty is not imposable on them as they had duly filed classification declaration, which is not disputed the revenue. It is open to the manufacturer to claim the change, in classification of his product and it is for the Revenue to determine the correct classification. We, therefore, set aside the penalty imposed on the appellants. Both the appeals are disposed of in above terms.